

37 Am. Jur. 2d Fraud and Deceit § 46

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Fraud and Deceit

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III. Means of Perpetration

A. In General

§ 46. Exercise of legal right; inducing lawful or unlawful act

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Fraud](#)  27, 28

On the principle that in doing a lawful thing in a lawful way no legal right is invaded,¹ actual fraud cannot be predicated upon acts which by law a party has a right to do nor upon nonperformance of acts which by law he or she is not bound to do.² Stated otherwise, there is no fraud where there is nothing done which is wrong,³ and fraud cannot be deduced or inferred from that which the law pronounces to be honest.⁴ A motive of indirect gain does not infect a transaction with fraud.⁵ Not only can fraud not be predicated upon acts which the party charged has a right by law to do,⁶ provided the party pursues such right by lawful means,⁷ but also it cannot be premised upon the nonperformance of acts which by law the party is not bound to do, whatever may be the motive, design, or purpose, either in doing or not doing the acts complained of.⁸

One who has been induced to do that which the law would have otherwise required him or her to do cannot claim to have been defrauded.⁹ On the other hand, one who by fraudulent misrepresentation induces another to do an act which would be lawful if the representation were true, but which is in fact unlawful, is liable to the other for the loss which he or she incurs in consequence of the unlawfulness of the act thus induced.¹⁰

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Footnotes

¹ Am. Jur. 2d, Actions § 48.

² Claysburg II Towers v. Benchmark Claysburg, 953 F. Supp. 861 (N.D. Ohio 1996) (applying Indiana law); Maynard v. 84 Lumber Co., 657 N.E.2d 406 (Ind. Ct. App. 1995).

³ Crosby v. Wenzoski, 164 Ga. App. 266, 296 S.E.2d 162 (1982); Meyer v. Schmidt, 135 Neb. 850, 284 N.W. 337 (1939).

⁴ First Nat. Bank v. Bryn Mawr Beach Bldg. Corp., 365 Ill. 409, 6 N.E.2d 654, 109 A.L.R. 1123 (1937); Meyer v. Schmidt, 135 Neb. 850, 284 N.W. 337 (1939); Montgomery v. Phillips Petroleum Co., 49 S.W.2d 967 (Tex. Civ. App.

Amarillo 1932), writ refused, (July 19, 1932).

5 § 33.

6 Voss v. Stranahan, 248 Mich. 390, 227 N.W. 542 (1929); Montgomery v. Phillips Petroleum Co., 49 S.W.2d 967 (Tex. Civ. App. Amarillo 1932), writ refused, (July 19, 1932); Papanikolas v. Sampson, 73 Utah 404, 274 P. 856 (1929).

7 Montgomery v. Phillips Petroleum Co., 49 S.W.2d 967 (Tex. Civ. App. Amarillo 1932), writ refused, (July 19, 1932); Papanikolas v. Sampson, 73 Utah 404, 274 P. 856 (1929).

8 State Bd. of Medical Examiners v. Morlan, 147 Fla. 695, 3 So. 2d 402 (1941); Montgomery v. Phillips Petroleum Co., 49 S.W.2d 967 (Tex. Civ. App. Amarillo 1932), writ refused, (July 19, 1932).

9 § 274.

10 Restatement Second, Torts § 557.

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